

NEWS NOTES

OF THE CENTRAL COMMITTEE FOR CONSCIENTIOUS OBJECTORS

Vol. 4, No. 4, May, 1952

Philadelphia, Pa.

Appeal Court Ok's C.O. Definition

Pardons May be Available

Conscientious objectors who served prison terms and did not receive pardons from the President's Amnesty Board in 1947 may be able to obtain pardons by individual application. A few C.O.'s have been successful in attempts to obtain a pardon by this method, and not many such attempts have been made. Application blanks and instructions can be obtained from the Pardon Attorney, Department of Justice, Washington 25, D.C.

A pardon can not be obtained until at least three years after release from prison. The application must be accompanied by character affidavits.

When a petition for pardon is filed it is referred to the United States attorney for the district where the trial took place for a report and recommendation. If possible, a statement and recommendation is also obtained from the sentencing judge. Reports are also secured from the administration of the institution where the sentence was served. If requested by the United States attorney involved "the record and conduct of each petitioner for pardon after completion of sentence shall be thoroughly investigated by the Federal Bureau of Investigation."

Once a case has been referred for reports and the pardon is denied the same case will not again be referred for reports without a written request from the United States attorney or the sentencing judge.

F.O.R. Requests Amnesty

At the request of the National Council of the Fellowship of Reconciliation (see NEWS NOTES, December 1952.) CCCO recently informally investigated in Washington the possibilities of obtaining an amnesty for all violators of the 1940 Selective Service Act. The investigation disclosed that it is extremely unlikely that an amnesty would be granted at this time, although it might be possible to obtain reconsideration of some groups of violators such as the men still in prison at the time of the Amnesty Board's report.

The committee decided not to ask for a partial reconsideration of the 1940 violators of selective service since it is CCCO policy to work only for amnesty for all violators. A reconsideration by a new "amnesty" board which would consider only individual pardons would probably further delay the possibility of obtaining amnesty, and the present administrative machinery of the Department of Justice is adequate for considering individual applications of men wishing pardons.

Ninth Circuit Affirms C.O. Status as Legally Subject to Whims of Congress

Jim George was sentenced July 9, 1951, to two three-year prison terms to be served concurrently. The sentences were for failure to fill out a questionnaire and failure to report for induction. George, a Quaker conscientious objector, is now serving the sentences at the Federal Prison Camp at Tucson, Arizona. His conviction was appealed.

In a decision (No. 13,095) filed April 21 the United States Court of Appeals for the Ninth Circuit affirmed the conviction. The court commented at length on the defense point which had been raised contending that the Selective Service Act violated the constitutional guaranty of freedom of religion.

The 1940 draft law merely required "religious training and belief" for C.O. classification. The Selective Service Act of 1948 made the same requirement but went on to say, "Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."

Constitutionality Questioned

A number of persons have questioned the constitutionality of Congress defining religion and also the constitutionality of giving one religious group special privilege. Apparently neither of these questions have legal merit according to the court's opinion in the George case.

The court pointed out that it is "established constitutional doctrine of long standing" that exemptions from military duty for conscientious objectors "do not spring from the Constitution, but from the Congress . . .

"This being so, there is brought into play the familiar principle that whatever the Government, State or Federal, may take away altogether, it may grant only on certain conditions. Otherwise put, whatever the Government may forbid altogether, it may condition even unreasonably. Outstanding in this domain are the cases dealing with intoxicating liquors. Because the Government may altogether prohibit production or sale, regulations of the most arbitrary kind will be sustained."

The court concluded, "In sum, as the exemption from participation in war on the ground of religious training and belief can be granted or withheld by the Congress, the Congress is free to determine the persons to whom

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James Cox, Jr. Interviewed

In April of 1951 CCCO received word that Judge Frank Picard in Detroit had sentenced James Cox, Jr., a conscientious objector, to five years in prison and a \$10,000 fine. This is the maximum sentence allowed by the draft law, and no other C.O. had received the maximum sentence up to that time, and no C.O. has received that sentence since then.

CCCO attempts to have as complete a record as possible on C.O. prosecutions, and it seemed especially desirable to get more information about James Cox and the circumstances surrounding his unusual sentence. However, none of the CCCO correspondents in Detroit responded to requests for more information about Cox.

Finally he turned up in prison at Ashland, Kentucky, and Lyle Tatum, CCCO executive secretary, visited him April 23, 1952, one year after the sentence. The difficulty in getting information about Cox arose because he is a Muslim. The Muslims do not cooperate with other pacifist groups, and apparently they have no national organization. Cox says that the Muslims have no organization because organizations are made by man. Muslims have no use for man-made institutions, including selective service.

Muslims are Non-registrants

Muslims who follow the orthodox faith are non-registrants. They are registered by Allah, and that is sufficient. Eight or ten of their group are in prison at the present time, and nearly a hundred of them were incarcerated at Sandstone, Minn., during World War II. While "respectable" C.O. non-registrants over 45 years of age were not prosecuted, many Muslims in this age group were sent to prison with the larger C.O. community apparently unaware of the injustices being done. Many of the older Muslims sent to prison during World War II had previously lost jobs because they would not register for social security.

James Cox, Jr. is a very likeable young man, soft-spoken, and giving the impression, at least to the casual visitor, of an extremely serene personality.

A couple of Muslim non-registrants at Chillicothe got into difficulty, apparently from reactions by inmates against their proselyting, and were transferred to other institutions. Cox had never heard of anyone getting into trouble for telling others about Islam and reported that it is the duty of all Muslims to teach the truth. However, the religion is just for Negroes, not for white persons.

Although Muslims do not celebrate Christmas, Cox said that he didn't mind getting a couple of hundred cards, and he asked if they came from CCCO. When told they were an expression of fellowship from persons who appreciated his conscientious stand he replied that the cards should have gone to the judge.

Cox Not Resentful

Cox apparently accepts his prison sentence as one of the tribulations of this world that might be expected by the faithful. But he said he could not understand why

Alternative Work Still Delayed

The I-O alternative service program continues to alternate between now you see it and now you don't. The Senate concurred with the House Appropriations committee recommendation (See NEWS NOTES, March-April) that Selective Service be given \$15,000 to study the program in contrast to \$150,000 asked by Selective Service to put the program in operation.

The funds were requested as a supplemental appropriation to be used from the time granted to the end of the current government fiscal year, June 30. In spite of the definite language of the House Appropriations Committee recommendation it is apparently legal for Selective Service to get the program underway immediately if they wish to use their general funds for that purpose.

Budget requests for the coming fiscal year have already been submitted and approved, and Selective Service did not ask specific funds for the C.O. program in their annual budget request.

Program to Start in July

Selective Service officials have indicated that the I-O draft will probably get started in a limited way after July 1, 1952. However, this is not definite. The program could be further delayed, or it could start any time. Some agencies have already requested men. Some church agencies are especially anxious to get underway with their plans for the use of I-O's.

Considerable reluctance is being met in some states for employment of C.O.'s by state institutions. Originally Selective Service expected C.O. labor to be in great demand, especially in state institutions. The reluctance to hire C.O.'s stems from a number of factors. The fact that C.O.'s must be paid the regular wage for the job they do has greatly reduced the number that some institutions with limited budgets would like to use. Civil service commissions have caused difficulties in the federal government and in some states. State loyalty oaths make some jobs unacceptable to some C.O.'s. In some areas expected labor shortages have not developed. And, of course, anti-C.O. prejudice sometimes enters the picture.

In the light of the confused state of the I-O program, CCCO recommends that men classified I-O continue in their present employment or stay in school, at least until something more definite develops.

the government would expect a "peaceful people" to take part in war.

In response to questions about his feelings toward Judge Picard, Cox said that he had no resentment or hard feelings toward the judge.

"Why," he asked, "should I have any resentment towards the judge? I don't want him to have any resentment towards me. He thought he was judging me, but he wasn't. He was being judged."

COURT OK'S C.O. DEFINITION

(Continued from page 1)

it will grant it, and may deny it to persons whose opinions the Congress does not class as 'religious' in the ordinary acceptance of the word. So, assuming that the definition of 'religious training and beliefs' in Section 456(j) is restrictive, such restriction is within the constitutional power of the Congress."

Definition Examined

The court then went on to exam the definition of religious training and belief in the light of discussions of religion by Webster's International Dictionary, William James, Justice Hughes and others. The court found, "So catholic a definition cannot be considered restrictive because it may not be broad enough to include, and actually excludes certain political, sociological, moral or philosophical theories unrelated to religion."

"Political, sociological, philosophical, and ethical grounds for opposing war are so distinct from opposition induced by religious training and belief that, aside from the considerations just adverted to, the Congress could very well recognize the latter as a ground for exemption and refuse sanction to the former. Even if we were not dealing with the plenary power to provide for the defense of the country, such classification would meet all the accepted tests of due process."

After finding that even a restrictive definition of religion would be constitutional and that the draft law definition was not restrictive the court reached an anticlimax by deciding that, "The appellant, having stated that he believes in a Supreme Being, has brought himself clearly within the statutory definition. And he is not in a position to question the validity of the section upon ground that others differently situated are not included."

New Point Raised

A new and interesting point was raised by the George defense concerning the exclusion of minors from the grand jury. The defense contended that since George is a minor he was entitled to have minors on the grand jury which returned the indictment.

The court said, "We do not believe that the compulsion to bear arms can automatically force the lowering of the age limit for other purposes, such as grand jury and jury service, under any theory of due process. The cases which forbid racial and other discriminations in the selection of jurors and grand jurors do not call for a different conclusion."

The court pointed out that "... under the law of California, minors are excluded from jury and grand jury service. ... And, as the Judicial Code also contains such exclusion ..., there is no conflict between the policy of the Congress and the policy of the State. Minority as a disqualification for participation in certain types of employment and the performance of certain public or social functions is recognized in the law of the United States. ... Constitutionality the Congress may, as may the State legislatures, deny certain privileges to minors which it grants to others. ... And minority as a special classification has always had judicial sanction."

The court concluded, "It is argued that, because

Briefly Noted

Frank Laraway, 18-year-old Quaker from Fairhope, Alabama, has been arrested for refusal to fill out a Selective Service questionnaire. Frank is a student at Talladega College, Talladega, Alabama. He is the first white student to attend the formerly all Negro college. Frank writes that his fellow students have all been very friendly, including the war vets, although they tend to shun pacifist ideas.

* * * *

Joel Doty, the oldest of the four Doty boys incarcerated at Ashland, Kentucky, for refusal to register has been offered a parole. Joel was the only one of the four boys to apply for parole, and he was originally turned down. Joel had a two-year sentence and Orin, Sid, and Paul had 18 months sentences. The latter three will be released on good time in June.

Joel may not accept his parole, as he feels he can not accept the usual parole restrictions. However, he is not certain just how it will work out. If he is not paroled he will be released in November.

The Doty's were the center of considerable interest when they went on a work strike at Springfield when they were first imprisoned. After being transferred to Ashland they felt conditions were enough better than at Springfield to merit going back to work.

* * * *

The United States Supreme Court has denied certiorari in the case of Foltz vs. Moore McCormack Lines (189 F. 2d 537). This case is of interest to C.O.'s since in it the Circuit Court held that FBI informants could be sued for giving malicious information and that the FBI could not keep such information absolutely privileged. The court said, "Nor do we think that the rationale ... need be made, upon grounds of public policy, to yield to any paramount public need for keeping open sources of information to the FBI to such an extent that all communications to it, however false and malicious, are absolutely privileged." (at 540)

A number of C.O.'s have felt that they have been the victims of "false and malicious" information given to FBI agents. Apparently, there can be recourse in court in any flagrant case, although many C.O.'s would hesitate to use this approach to the problem.

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CCCO has just mailed its semi-annual appeal for funds. Some readers of NEWS NOTES may receive an appeal letter just after having sent in a donation. Others on the mailing list may be paying a regular pledge. In the interests of economy of time and effort we do not sort through our mailing list to prevent this kind of duplication.

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There is no charge for NEWS NOTES, and we are glad to send it to all persons interested in news of conscientious objectors. If you are not already on our mailing list a post card request will add your name to get NEWS NOTES regularly.

minors are subjected to the Selective Service Act, they cannot be prosecuted unless minors are on the grand jury which indicts them. The argument is untenable."

THE COURT REPORTER

I Prosecutions

Confirmation of sentence not previously available
1-29-52 Don Begeman, 5 years (Detroit, Mich)
Judge Theodore Levin

Sentenced since last issue

4-1-52 Ted Vernon Head, 3 yrs. (Oklahoma City, Okla.) Judge Edgar S. Vaught

4-2-52 Lester Packer, 4 yrs. (New York, N.Y.)

4-21-52 Eldon Barga, non-registrant, 1 yr. & 1 day (Wichita, Kans.) Judge D. C. Hill

Appeal

4-21-52 James George, conviction affirmed, 9th Circuit

Arrests since last issue

Alabama—Frank Laraway

California—Rudy Linan, Robert Kent, Roy Elder, Peter Klopfer

Kansas—Marvin Koehn

(All prosecutions for failure to report for or submit for induction unless otherwise noted.)

II Released from prison

On parole

1-11-52 Max Pardue

On bond, appeal pending

4-21-52 Ted Head

III Men Currently Imprisoned

Ashland, Ky.—Aaron Yoder, Kenneth Champney, James Pierce, James Lawson, Joel, Orin, Sid, Paul Doty, Clifford Walter, Don Begeman

Chillicothe, Ohio—Arnold Schroeder

Danbury, Conn.—Stephen Shaw, William Zeo, Edmund Baron, Richard Nasal, Lester Packer

El Reno, Okla.—Carlton Owen

Florence, Ariz.—Timothy Slevin

Lewisburg, Pa.—Henry Koster

Mill Point, W. Va.—David Wireman, Franklin Curia, Amos Brokaw, Stephen Simon

McNeil Island, Wash.—Donald Koch, James MacDonald, Robert Starkweather, Fred Granden, Bernard Primbsch, Charles Hoeh, Frank Broderick, Tom Harrison, Roger Rose

"It is possible to hold a faith with enough confidence to believe that what should be rendered to God does not need to be decided and collected by Caesar." Justice Jackson in dissent in *Zorach vs. Clauston U.S.* (N.Y. City released time religious education case) opinion dated April 28, 1952.

C.O.'s Cannot be Extradited

A number of persons have written CCCO asking about the legal questions involved in the possible extradition of C.O.'s who have left the United States and who are violators of the draft law. It is not possible for the government to instigate extradition proceedings against any selective service violator, irrespective of the foreign country in which he may be.

Extradition is covered by treaties between countries, and persons may be extradited only for offenses which are specified in the appropriate treaty. The United States has no treaties specifying extradition for draft law offenses.

Montgomery, Ala.—Ollie Sanderson

Petersburg, Va.—Larry Atkins, Edward Beals, Ted Woldorf

Springfield, Mo.—Robert Michener, Robert Beach, Vincent Lamb

Tucson, Ariz.—Alfred Dana, James Farmer, James Maloney, Jack Jenewin, Keith Barnhart, Jim George, Howard Harris, William Georgeoff, George Meade

Institution not verified—Eldon Barga

Total number of C.O.'s convicted since 1948 Act to date: 138 (This is a minimum number since we miss a few cases and J.W.'s and Muslims are not included. Muslims formerly carried in CCCO records have been dropped as it has not been possible to keep in touch with their cases.)

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